

00050.105200 (J-3782)

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
: Examiner: Anabel Ton
Anthony G. MICELE, JR. (Deceased), ET AL.)
: Group Art Unit: 2875
Application No.: 10/632,164)
:
Filed: August 1, 2003)
:
For: LUMINARY PRODUCT)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF RENATA FERRAILOLO LEITE PEREIRA
UNDER 37 C.F.R. § 1.132
(Commercial Success)**

Sir:

I, Renata Ferraiolo Leite Pereira, hereby declare:

1. I am making this Declaration to evidence the commercial success of the subject matter of the pending claims in the present application, namely U.S. Patent Application No. 10/632,164.

2. I am a Senior Brand Manager of the Air Care Candles section of S.C. JOHNSON & SON, INC. ("S.C. JOHNSON"), a corporation duly organized and existing under the laws of the State of Wisconsin and having a principal place of business at 1525 Howe Street, Racine, Wisconsin 53403.

3. I am a citizen of Brazil and reside at 6147 Indian Trail Road, Gurnee, Illinois 60031.

4. I am duly authorized and empowered to act on behalf of S.C. JOHNSON in this matter.

5. This Declaration is based upon my own personal knowledge and information that I have received as set forth below.

Commercial Product – Candles

6. S.C. JOHNSON sells GLADE® candle products (“CANDLES”) throughout the United States.

a. Upon information and belief, throughout the calendar year (“CY”) 2003, S.C. JOHNSON sold scented CANDLES as disclosed in and embodying one or more claims in U.S. Patent No. 6,554,447, which is entitled “Candle Product Decorated With Heat-Shrinkable Film and Related Method” and assigned to S.C. JOHNSON. These scented CANDLES are hereinafter referred to as NON-HAMMERED CANDLES.

b. On or about January 1, 2004, S.C. JOHNSON discontinued selling the NON-HAMMERED CANDLES.

c. Upon information and belief, since about January 1, 2004, S.C. JOHNSON has sold scented CANDLES as disclosed in and embodying one or more claims in the present application, namely U.S. Patent Application No. 10/632,164. These scented CANDLES are hereinafter referred to as HAMMERED CANDLES.

7. Throughout CY 2003, NON-HAMMERED CANDLES were available to consumers in a variety of fragrances, including (1) Apple Cinnamon, (2) French Vanilla, (3) Mountain Berry, (4) Lilac Spring, and (5) Strawberries & Cream.

8. Throughout CY 2004, HAMMERED CANDLES were available to consumers in a variety of fragrances. Five such fragrances matched those of the NON-

HAMMERED CANDLES, namely (1) Apple Cinnamon, (2) French Vanilla, (3) Mountain Berry, (4) Lilac Spring, and (5) Strawberries & Cream. These five fragrances are hereinafter referred to as MATCHING FRAGRANCES.

9. Upon information and belief, the substantial difference between S.C. JOHNSON's NON-HAMMERED CANDLES and HAMMERED CANDLES in the MATCHING FRAGRANCES (indeed, in all scented CANDLES) is that the HAMMERED CANDLES generally comprise a candle holder having a hammered texture on an inner surface thereof and the NON-HAMMERED CANDLES do not.

Commercial Success Data

10. TABLE I (below) provides ACNielsen scan (at the register) data for analyzing the commercial success of the present invention (i.e., HAMMERED CANDLES). The ACNielsen data is for Food, Drug, and Mass ("FDM") classes of trade nationwide, less WAL-MART®, which does not release its sales data to the public. (Note: ACNielsen is an independent provider of market research, information, and analysis to the consumer products and service industries worldwide.)

TABLE I						
	S.C. JOHNSON's RETAIL DOLLAR SALES		%ACV DISTRIBUTION		SCENTED CANDLES DOLLAR SHARE	
	CY 2003 Week Ending 12/27/03	CY 2004 Week Ending 01/01/05	CY 2003 Week Ending 12/27/03	CY 2004 Week Ending 01/01/05	CY 2003 Week Ending 12/27/03	CY 2004 Week Ending 01/01/05
Apple Cinnamon	\$ 7,620,819	\$ 8,686,568	33.6	37.6	5.3	7.0
French Vanilla	\$ 5,952,269	\$ 7,104,778	37.1	39.4	4.1	5.8
Mountain Berry	\$ 9,929,801	\$ 7,383,481	42.6	31.0	6.9	6.0
Lilac Spring	\$ 4,157,831	\$ 2,609,992	31.9	22.2	2.9	2.1
Strawberries & Cream	\$ 3,519,395	\$ 2,932,104	25.5	21.9	2.4	2.4

a. “S.C. JOHNSON’s Retail Dollar Sales” means S.C. JOHNSON’s total retail sales in dollars in the United States in the FDM classes of trade, less WAL-MART®, which are set forth in TABLE I for each of the MATCHING FRAGRANCES.

b. “%ACV Distribution” means the weighted distribution measure or percentage of the total number of potential sales locations in the United States, which provides a measure of product distribution that accounts for different store sizes (e.g., Super K-Mart vs. “Mom & Pop” stores) (“ACV” stands for “All Commodity Volume”).

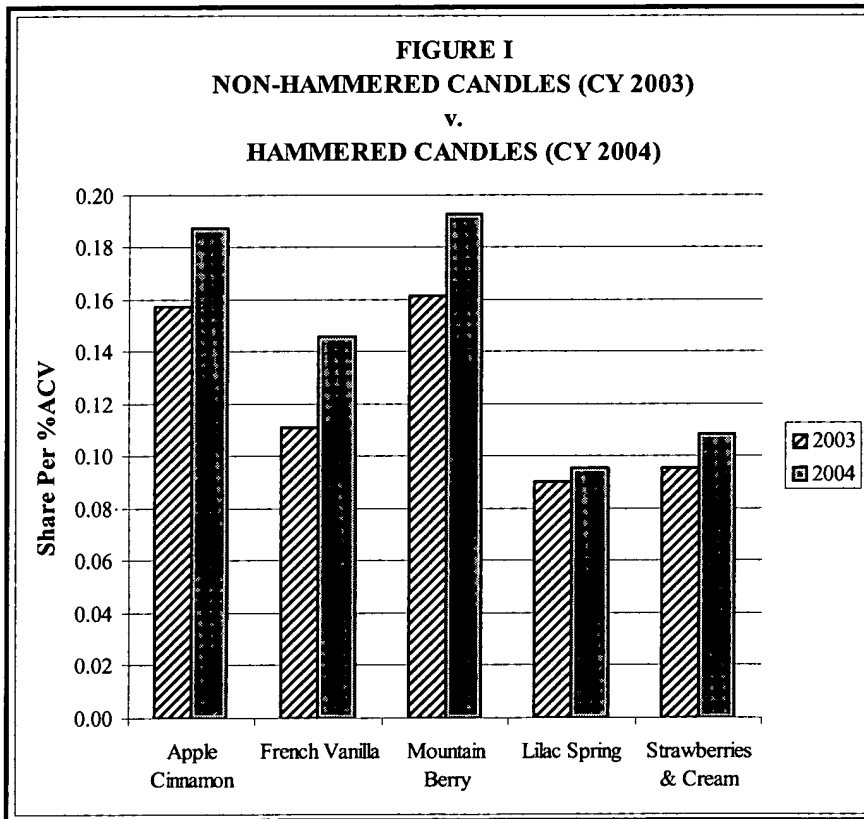
c. “Scented Candles Dollar Share” means S.C. JOHNSON’s Retail Dollar Sales (for each of the MATCHING FRAGRANCES) as a percentage of Total Scented Candle Dollar Sales within the FDM less WAL-MART® data set. For example, for CY 2003, Total Scented Candle Dollar Sales equaled about \$144 million and S.C. JOHNSON’s Retail Dollar Sales for Apple Cinnamon were about \$7.6 million, resulting in S.C. JOHNSON having a Scented Candles Dollar Share of about 5.3%.

11. ACNielsen data for only the MATCHING FRAGRANCES is relied upon herein in order to best eliminate “fragrance” as a factor in this commercial success evaluation.

Proof of Commercial Success

12. The commercial success of the present invention is shown by calculating S.C. JOHNSON’s Scented Candles Dollar Share per Percentage Point of ACV Distribution (“Share Per %ACV”), based on the data in TABLE I. Share Per %ACV is a performance metric that isolates year-to-year changes due to fluctuations in distribution and market size, which shows the “velocity” of market share growth. TABLE II and FIGURE I (both below) provide S.C. JOHNSON’s Share Per %ACV for each of the MATCHING FRAGRANCES.

TABLE II			
	Share per %ACV		RESULT
	CY 2003 Week Ending 12/27/03	CY 2004 Week Ending 01/01/05	COMMERCIAL SUCCESS
Apple Cinnamon	0.1574	0.1873	Increase
French Vanilla	0.1111	0.1461	Increase
Mountain Berry	0.1616	0.1930	Increase
Lilac Spring	0.0904	0.0953	Increase
Strawberries & Cream	0.0957	0.1086	Increase



13. Share Per %ACV measures commercial success of a product in a market while neutralizing the impact of changes in distribution and overall market size on that success. For example, from CY 2003 to CY 2004, S.C. JOHNSON's Retail Dollar Sales for Apple Cinnamon increased about 14%, %ACV Distribution increased about 12%, and the market size decreased about 14%. To show how Apple Cinnamon actually performed, Share Per %ACV

takes all these changes into account by analyzing S.C. JOHNSON's Scented Candles Dollar Share (of the total scented candle market) for Apple Cinnamon per Percentage Point of ACV Distribution. In this case, Share Per %ACV increased from about 0.16 to about 0.19—demonstrating commercial success. As another example, from CY 2003 to CY 2004, S.C. JOHNSON's Retail Dollar Sales for Mountain Berry decreased. Nevertheless, where it had distribution, Mountain Berry performed better in 2004. Indeed, Mountain Berry Share Per %ACV also increased from about 0.16 to about 0.19—demonstrating commercial success.


14. Upon information and belief, S.C. JOHNSON's Share Per %ACV increased for all of the MATCHING FRAGRANCES because of S.C. JOHNSON's transition to the present invention (i.e., HAMMERED CANDLES) on or about January 1, 2004. These increased Shares Per %ACV do not result from promotion, tying, advertising, shift in advertising, market power, or other factors extraneous to the merits of the present invention. In contrast, as discussed above, the commercial success of the present invention results directly from advantages inherent in the pending claims.

15. I believe HAMMERED CANDLES are a commercial success relative to NON-HAMMERED CANDLES.

16. I declare further that all statements made in this Declaration of my own knowledge are true, that all statements made on information and belief are believed to be true, and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18

of the United States Code, and that such willful false statements may jeopardize the validity of any patent that may issue from the present application.

Dated: May 6, 2005


Renata Feraiole Leite Pereira
Senior Brand Manager
Air Care Candles
S.C. Johnson & Son, Inc.

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